

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:17-CV-147

M. PETER LEIFERT, THE NORTH  
CAROLINA GREEN PARTY, THE  
CONSTITUTION PARTY OF NORTH  
CAROLINA, THE CONSTITUTION PARTY  
OF THE UNITED STATES, THE GREEN  
PARTY OF THE UNITED STATES, AND  
BRIAN IRVING,

Plaintiffs,

v.

KIM WESTBROOK STRACH in her official  
capacity as Executive Director of the North  
Carolina State Board of Elections,

Defendant,

MOTION TO STRIKE  
FOURTH AMENDED COMPLAINT

NOW COMES defendant, KIM WESTBROOK STRACH, in her official capacity as Executive Director of the North Carolina State Board of Elections, by and through her undersigned counsel, and hereby moves to strike Plaintiffs' purported "Fourth Amended Complaint" (Doc. #40). Pursuant to Fed. R. Civ. P. 15(a)(2), an amended pleading may not be filed without the opposing party's written consent or the court's leave. Plaintiffs had neither.<sup>1</sup>

Plaintiffs now seek to amend their complaint for a fourth time even though Defendant's Motion to Dismiss remains pending. It appears that Plaintiffs' attempt to

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<sup>1</sup> Plaintiffs' counsel did inquire with undersigned counsel as to whether the Defendant would consent. Defendant, through an email from her counsel, declined to consent. A copy of this email can be submitted if desired.

amend their complaint again is precipitated by Senate Bill S656 (S.L. 2017-214), which mooted a number of Plaintiffs' claims by granting the relief they seek. As such, dismissal of those affected claims would be more appropriate rather than filing another amended complaint, which would require a separate motion to dismiss and additional briefings.

Defendant has maintained throughout its motions to dismiss and supporting memorandums (*see* Docs #14, #15, #32, #33) that the various amended complaints have failed to state a claim that is legally feasible. Plaintiffs' amendments have not cured these deficiencies, and they have not sought to do so. Rather, Plaintiffs continue to add additional unsupported claims.

Plaintiffs' continuing amendments are futile, especially in light of Defendant's Motions to Dismiss, and allowing yet another amendment is prejudicial to Defendant, especially when the amendment is without a motion as to why the amendment is being sought.

This the 21<sup>st</sup> day of November, 2017.

JOSHUA H. STEIN  
Attorney General

/s/ James Bernier, Jr.  
James Bernier, Jr.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing document with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter, including:

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This the 21<sup>st</sup> day of November, 2017.

/s/ James Bernier, Jr.  
James Bernier, Jr.  
Special Deputy Attorney General